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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND) Case No.
PLUMBING, INC., individually and on)
behalf of all others similarly situated,) **CLASS ACTION**
Plaintiff,) **COMPLAINT FOR VIOLATIONS**
vs.) **OF:**
GLOBAL CAPITAL TRADING LLC,) 1. NEGLIGENT VIOLATIONS
and DOES 1 through 10, inclusive, and) OF THE TELEPHONE
each of them,) CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
Defendant.) 2. WILLFUL VIOLATIONS
) OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(b)]
) 3. NEGLIGENT VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]
) 4. WILLFUL VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT [47 U.S.C. §227(c)]
) **DEMAND FOR JURY TRIAL**

Plaintiff ABANTE ROOTER AND PLUMBING, INC. (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

CLASS ACTION COMPLAINT

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of GLOBAL CAPITAL TRADING LLC (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a Florida company. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does business within the State of California and Plaintiff resides within the County of Alameda.

PARTIES

4. Plaintiff, ABANTE ROOTER AND PLUMBING, INC. ("Plaintiff"), is a corporation of the State of California, whose principal place of business is in the county of Alameda and is a "person" as defined by *47 U.S.C. § 153 (39)*.

5. Defendant, GLOBAL CAPITAL TRADING LLC (“Defendant”) is a business loan company, and is a “person” as defined by *47 U.S.C. § 153 (39)*.

6. The above named Defendant, and its subsidiaries and agents, are

collectively referred to as “Defendants.” The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning on or about September 11, 2017, Defendant contacted Plaintiff on Plaintiff's cellular telephone numbers ending in -6147 and -7210, in an attempt to solicit Plaintiff to purchase Defendant's services.

9. Defendant used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

10. Defendant contacted or attempted to contact Plaintiff from telephone numbers 786-286-0686, 201-433-4440, 971-319-8271 and 844-980-6800 confirmed to be Defendant's number.

11. Defendant's calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

12. During all relevant times, Defendant did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on its cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

13. Further, Plaintiff's cellular telephone numbers ending in -6147 and -7210 was added to the National Do-Not-Call Registry on or about July 12, 2018.

14. Defendant placed multiple calls soliciting its business to Plaintiff on its cellular telephones ending in -7210 in or around September 11 2017 and continuing through April 29, 2019.

15. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

16. Plaintiff received numerous solicitation calls from Defendant within a 12-month period.

17. Defendant continued to call Plaintiff on its telephone number -7210 in an attempt to solicit its services and in violation of the National Do-Not-Call provisions of the TCPA.

18. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant after being on the National Do-Not-Call list for several years prior to Defendant's initial call, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

19. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes").

20. The class concerning the ATDS claim for no prior express consent (hereafter “The ATDS Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such

1 person had not previously consented to receiving such
2 calls within the four years prior to the filing of this
3 Complaint

4 21. The class concerning the National Do-Not-Call violation (hereafter
5 “The DNC Class”) is defined as follows:

6 All persons within the United States registered on the
7 National Do-Not-Call Registry for at least 30 days, who
8 had not granted Defendant prior express consent nor had
9 a prior established business relationship, who received
10 more than one call made by or on behalf of Defendant
11 that promoted Defendant’s products or services, within
12 any twelve-month period, within four years prior to the
13 filing of the complaint.

14 22. Plaintiff represents, and is a member of, The ATDS Class, consisting
15 of all persons within the United States who received any collection telephone calls
16 from Defendant to said person’s cellular telephone made through the use of any
17 automatic telephone dialing system or an artificial or prerecorded voice and such
18 person had not previously not provided their cellular telephone number to
19 Defendant within the four years prior to the filing of this Complaint.

20 23. Plaintiff represents, and is a member of, The DNC Class, consisting
21 of all persons within the United States registered on the National Do-Not-Call
22 Registry for at least 30 days, who had not granted Defendant prior express consent
23 nor had a prior established business relationship, who received more than one call
24 made by or on behalf of Defendant that promoted Defendant’s products or services,
25 within any twelve-month period, within four years prior to the filing of the
complaint.

26 24. Defendant, its employees and agents are excluded from The Classes.
27 Plaintiff does not know the number of members in The Classes, but believes the
28 Classes members number in the thousands, if not more. Thus, this matter should

1 be certified as a Class Action to assist in the expeditious litigation of the matter.

2 25. The Classes are so numerous that the individual joinder of all of its
3 members is impractical. While the exact number and identities of The Classes
4 members are unknown to Plaintiff at this time and can only be ascertained through
5 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
6 The Classes includes thousands of members. Plaintiff alleges that The Classes
7 members may be ascertained by the records maintained by Defendant.

8 26. Plaintiff and members of The ATDS Class were harmed by the acts of
9 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
10 and ATDS Class members via their cellular telephones thereby causing Plaintiff
11 and ATDS Class members to incur certain charges or reduced telephone time for
12 which Plaintiff and ATDS Class members had previously paid by having to retrieve
13 or administer messages left by Defendant during those illegal calls, and invading
14 the privacy of said Plaintiff and ATDS Class members.

15 27. Common questions of fact and law exist as to all members of The
16 ATDS Class which predominate over any questions affecting only individual
17 members of The ATDS Class. These common legal and factual questions, which
18 do not vary between ATDS Class members, and which may be determined without
19 reference to the individual circumstances of any ATDS Class members, include,
20 but are not limited to, the following:

21 a. Whether, within the four years prior to the filing of this
22 Complaint, Defendant made any telemarketing/solicitation call
23 (other than a call made for emergency purposes or made with
24 the prior express consent of the called party) to a ATDS Class
25 member using any automatic telephone dialing system or any
26 artificial or prerecorded voice to any telephone number
27 assigned to a cellular telephone service;

28 b. Whether Plaintiff and the ATDS Class members were damaged

thereby, and the extent of damages for such violation; and

- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

28. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The ATDS Class.

29. Plaintiff and members of The DNC Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and DNC Class members via their telephones for solicitation purposes, thereby invading the privacy of said Plaintiff and the DNC Class members whose telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class members were damaged thereby.

30. Common questions of fact and law exist as to all members of The DNC Class which predominate over any questions affecting only individual members of The DNC Class. These common legal and factual questions, which do not vary between DNC Class members, and which may be determined without reference to the individual circumstances of any DNC Class members, include, but are not limited to, the following:

a. Whether, within the four years prior to the filing of this Complaint, Defendant or its agents placed more than one solicitation call to the members of the DNC Class whose telephone numbers were on the National Do-Not-Call Registry and who had not granted prior express consent to Defendant and did not have an established business relationship with Defendant;

b. Whether Defendant obtained prior express written consent to place solicitation calls to Plaintiff or the DNC Class members'

telephones;

- c. Whether Plaintiff and the DNC Class member were damaged thereby, and the extent of damages for such violation; and
- d. Whether Defendant and its agents should be enjoined from engaging in such conduct in the future.

31. As a person that received numerous solicitation calls from Defendant within a 12-month period, who had not granted Defendant prior express consent and did not have an established business relationship with Defendant, Plaintiff is asserting claims that are typical of the DNC Class.

32. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

33. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

34. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

35. Defendant has acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class

36. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

37. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

38. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

39. Plaintiff and the ATDS Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class

40. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

41. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,

and in particular 47 U.S.C. § 227 (b)(1)(A).

42. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

43. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class

44. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

45. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

46. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c), Plaintiff and the DNC Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

47. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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FOURTH CAUSE OF ACTION**Knowing and/or Willful Violations of the Telephone Consumer Protection
Act****47 U.S.C. §227 et seq.****On Behalf of the DNC Class**

48. Plaintiff repeats and incorporates by reference into this cause of action
the allegations set forth above at Paragraphs 1-35.

49. The foregoing acts and omissions of Defendant constitute numerous
and multiple knowing and/or willful violations of the TCPA, including but not
limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
in particular *47 U.S.C. § 227 (c)(5)*.

50. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)*.

51. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION**Negligent Violations of the Telephone Consumer Protection Act****47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(c)(5)*.
- Any and all other relief that the Court deems just and proper.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(c)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- Any and all other relief that the Court deems just and proper.

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2 Respectfully Submitted this 16th Day of January, 2020.
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12 By: /s/ Todd M. Friedman
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